

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In re:

SENDMYGIFT.COM, Inc.,

Bky. No. 00-35021 (GFK)
Chapter 11

Debtor.

SENDMYGIFT.COM, Inc.

Adv. No. _____

Plaintiff,

**DEFENDANTS' ANSWER
AND COUNTERCLAIMS**

v.

Daryl A. Shiber, Kimberly G. Shiber,
DHS Corporation, and K.G.S., LLC

Defendants.

For their Answer to Plaintiff's Advisory Complaint, Defendant, Daryl A. Shiber; Kimberly G. Shiber, DHS Corporation ("DHS") and K.G.S., LLC ("KGS") (hereinafter collectively "Defendants") state that except as specifically admitted, qualifiedly admitted, specifically alleged, or qualifiedly alleged, Defendants deny each and every allegation, averment, matter, statement and thing contained in Plaintiff's Complaint and put Plaintiff to the strict proof thereof. For answering Plaintiff's Complaint, Defendants state and alleges as follows:

1. In response to the allegations contained in paragraph 1 of Plaintiff's Complaint, Defendants admit the allegations contained therein.

2. In response to the allegations contained in paragraph 2 of Plaintiff's Complaint, Defendants deny the allegations contained therein.
3. In response to the allegations contained in paragraph 3 of Plaintiff's Complaint, Defendants deny this is a core proceeding and do not consent to the bankruptcy judge or court entering final orders.
4. In response to the allegations contained in paragraph 4 of Plaintiff's Complaint, Defendants deny the allegations contained therein.
5. In response to the allegations contained in paragraph 5 of Plaintiff's Complaint, Defendants admit that Plaintiff is asserting claims for the return of money and defamation, but Defendants deny any and all allegations of liability or wrongdoing associated with said claims.
6. In response to the allegations contained in paragraph 6 of Plaintiff's Complaint, Defendants admit the allegations contained therein.
7. In response to the allegations contained in paragraph 7 of Plaintiff's Complaint, Defendants admit the allegations contained therein.
8. In response to the allegations contained in paragraph 8 of Plaintiff's Complaint, Defendants admit that KGS is a limited liability company organized under the laws of the state of Minnesota, that KGS is owned by Kimberly G. Shiber and denies the remainder of the allegations contained therein.
9. In response to the allegations contained in paragraph 9 of Plaintiff's Complaint, Defendants admit the allegations contained therein.

10. In response to the allegations contained in paragraph 10 of Plaintiff's Complaint, Defendants admit the allegations contained therein.
11. In response to the allegations contained in paragraph 11 of Plaintiff's Complaint, Defendants admit the allegations contained therein.
12. In response to the allegations contained in paragraph 12 of Plaintiff's Complaint, Defendants admit the allegations contained therein.
13. In response to the allegations contained in paragraph 13 of Plaintiff's Complaint, Defendants admit that prior to refinancing KGS was delinquent or about to become delinquent in the payments on the Mortgage to Premier Bank, but subsequently refinanced and paid all amounts due Premier Bank and denies the remainder of the allegations contained therein.
14. In response to the allegations contained in paragraph 14 of Plaintiff's Complaint, Defendants specifically allege that they lack sufficient information to form a belief as to what the Plaintiff believes and therefore denies the allegations contained therein.
15. In response to the allegations contained in paragraph 15 of Plaintiff's Complaint, Defendant denies the allegations contained therein.
16. In response to the allegations contained in paragraph 16 of Plaintiff's Complaint, Defendants deny the allegations contained therein.
17. In response to the allegations contained in paragraph 17 of Plaintiff's Complaint, Defendants deny the allegations contained therein.

18. In response to the allegations contained in paragraph 18 of Plaintiff's Complaint, Defendants deny the allegations contained therein.
19. In response to the allegations contained in paragraph 19 of Plaintiff's Complaint, Defendants admit the property at 12345 Portland Avenue was refinanced on or about March 1, 2002, but deny the remainder of the allegations contained therein.
20. In response to the allegations contained in paragraph 20 of Plaintiff's Complaint, Defendants deny the allegations contained therein.
21. In response to the allegations contained in paragraph 21 of Plaintiff's Complaint, Defendants deny the allegations contained therein.
22. In response to the allegations contained in paragraph 22 of Plaintiff's Complaint, Defendants specifically allege that in 2003 Mr. Burnett and Plaintiff without consent entered into or caused others to enter into 12345 Portland Avenue and removed computer equipment, office equipment, fixtures and other personal property, over which KGS, LLC asserts legal right to ownership.
23. In response to the allegations contained in paragraph 23 of Plaintiff's Complaint, Defendants deny the allegations contained therein.
24. In response to the allegations contained in paragraph 24 of Plaintiff's Complaint, Defendants deny the allegations contained therein.
25. In response to the allegations contained in paragraph 25 of Plaintiff's Complaint, Defendants deny the allegations contained therein.

26. In response to the allegations contained in paragraph 26 of Plaintiff's Complaint, Defendants deny the allegations contained therein.
27. In response to the allegations contained in paragraph 27 of Plaintiff's Complaint, Defendants deny the allegations contained therein.
28. In response to the allegations contained in paragraph 28 of Plaintiff's Complaint, Defendants deny the allegations contained therein.
29. In response to the allegations contained in paragraph 29 of Plaintiff's Complaint, Defendants deny the allegations contained therein.

AFFIRMATIVE DEFENSES

1. Plaintiff's claims are bared in whole or in part by the applicable statutes of limitations.
2. Plaintiff's complaint fails to state a claim or claims, for which relief can be granted.
3. If Plaintiff sustained any damages as alleged in its Complaint, such damages were caused or contributed to by Plaintiff's own actions.
4. Plaintiff has failed to mitigate its damages, if any.
5. Plaintiff's claims are barred in wavier, estoppel or laches.
6. Plaintiff has failed to plead its defamation claim with sufficient specificity.
7. Any statements made by defendants are privileged or true.
8. Defendant has sustained no damages as a result of Defendants alleged statements.

COUNTERCLAIMS

Defendants, as and for their Counterclaims and states and alleges as follows:

1. On May 1, 2001, KGS pursuant to a Court approved purchase agreement purchased from Plaintiff an office building at 12345 Portland Avenue [the “Portland Building”].
2. Under the terms of the Purchase Agreement, Plaintiff had 60 days from the date of closing to remove certain personal property owned by it from the Portland Building.
3. Defendants provided Plaintiff access to the Portland Building to remove its personal property from the Portland Building.
4. In 2003 and nearly two years following the closing, Plaintiff without the consent or knowledge of Defendants entered into the Portland Building and removed computer equipment, office equipment, fixtures and other personal property, over which Defendants assert legal rights of ownership.
5. During its removal of the items referred to above, Plaintiff caused damage to the Portland Building.
6. At the time the items were removed, Defendants had a legal right to access and use the Portland Building.
7. At the time the items were removed, Plaintiffs did not have a legal right to access or use the Portland Building.

**COUNT I
TREASPASS**

8. Defendants reallege and reaffirm the allegations contained in paragraphs 1 – 7 above.
9. Plaintiff without Defendants' consent entered into the Portland Building.
10. While in the Portland Building, Plaintiff caused damage to the Portland Building and Defendants' personal property.
11. Defendants seek damages in an amount to be determined at trial arising from Plaintiff's trespass.

**COUNT II
CONVERSION**

12. Defendants reallege and reaffirm the allegations contained in paragraphs 1 – 11 above.
13. Plaintiff without Defendants' consent removed Defendants property from the Portland Building.
14. Plaintiff has denied Defendants the use of their property.
15. Defendants seek damages in an amount to be determined at trial arising from Plaintiff's conversion of Defendants' property.

**COUNT III
NEGLIGENCE**

16. Defendants reallege and reaffirm the allegations contained in paragraphs 1 – 15 above.
17. Assuming Plaintiff was within its rights to enter the Portland Building without Defendants' consent, Plaintiff had a duty to enter and remove property in a

manner which would not cause damage or injury to the Portland Building or Defendants' property.

18. Plaintiff breached its duty to Defendants.
19. Defendants seek damages in an amount to be determined at trial arising from Plaintiff's negligence.

COUNT IV UNJUST ENRICHMENT

20. Defendants reallege and reaffirm the allegations contained in paragraphs 1 – 19 above.
21. Assuming plaintiff is the rightful owner of the removed property or a portion thereof, Plaintiff failed to remove its property from the Portland Building upon the sale of the Portland Building.
22. By failing to remove the property from the Portland Building in connection with the sale, Plaintiff utilized space in the Portland Building for which it has not compensated Defendants.
23. By failing to compensate Defendants for the use of the space in the Portland Building, Plaintiff was unjustly enriched at the expense of Defendants.
24. As a result, Plaintiff was unjustly enriched at Defendants expense.
25. Defendants are entitled to receive compensation in an amount commensurate with the value of the space occupied by Plaintiff in the storage of the property.

COUNT V DECLARATORY JUDGMENT / SPECIFIC PERFORMANCE

26. Defendants reallege and reaffirm the allegations contained in paragraphs 1 – 25 above.

27. Defendant KGS entered into and purchase agreement under which Plaintiff agreed to sell the Portland Building.
28. The parties purchase agreement was freely negotiated and duly executed.
29. Under the purchase agreement certain rights concerning the ownership of the Portland Building, fixtures and personal property were defined.
30. Defendant KGS, LLC closed on the Portland Property on May 31, 2001.
31. On May 31, 2001 legal title to the Portland Property passed to KGS, LLC.
32. On May 31, 2001 legal title to the fixtures within the Portland Building passed to KGS, LLC.
33. On May 31, 2001 legal title to the personal property within the Portland Building passed to KGS, LLC.
34. Plaintiff and Defendant each assert claims of legal title to personal property and fixtures Plaintiff removed from the Portland Building.
35. Defendants seek a declaratory judgment determining the rights of the parties under the purchase agreement as it relates to the ownership of the removed items.
36. Defendants seek a declaratory judgment granting title to the removed property to Defendants.
37. Defendants seek an order requiring Plaintiff return the removed items from the Portland Building.

WHEREFORE, Defendants prays for the following relief:

1. that Plaintiff take nothing by its Complaint and that Plaintiff's Complaint be dismissed in its entirety;

2. Declaratory relief granting Defendants title to the property Plaintiff removed from 12345 Portland Avenue;
3. Damages in an amount to be determined at trial for the loss of the Property removed from 12345 Portland Avenue;
4. Damages in an amount to be determined at trial for the loss damage Plaintiff caused during its removal of property from the Portland Building in an amount to be determined at trial;
5. that Defendants have and recover their attorneys' fees, costs and disbursements in this action.

DEFENDANTS DEMAND A JURY TRIAL ON ALL CLAIMS UNDER WHICH A JURY TRIAL IS PERMITTED

Dates: May 4, 2004

-e- John F. Cameron .
John F. Cameron (#218613)
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33 South Sixth Street
Minneapolis, MN 55402
(612) 341-0394

State of Minnesota } ss
County of Ramsey }

Ct. File No. 00-35021

Preferred Legal Services, Inc.

Robert F. Steele, being duly sworn, on oath says: that on the
4th day of May, 2004 at 3:23 pm he served the
attached Defendants' Answer and Counterclaims

upon DAVID John Holand, Esq. therein named,
personally at 120 S. 6th ST. #1100, Minneapolis
County of Hennepin State of Minnesota, by handing to and leaving with
Kirsten Lundholm, Office Administrator, An Expressly Authorized Agent
FOR SERVICE a true and correct copy thereof.

Subscribed and Sworn to Before Me this
4 day of May, 2004
[Signature]

